



STATE OF CONNECTICUT

DEPARTMENT OF MOTOR VEHICLES

Rowland State Government Center, 55 West Main Street, Waterbury, CT 06702-2004
<http://dmvct.org>



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June 20, 2003

Docket Management Facility
United States Department of Transportation
Dockets Management Facility
Room PL- 401
400 Seventh Street, SW
Washington, D.C. 20590-0001

Re: Docket Number FMCSA-2001-11117-25

The following are the comments of the State of Connecticut, Department of Motor Vehicles (CTDMV) on the interim final rules concerning the revised requirements to obtain a hazardous materials endorsement for a commercial drivers license (CDL). If changes or additions are not made in the rules, we believe that some form of official guidance from the Department of Transportation, Federal Motor Carrier Safety Administration (FMCSA) would be appropriate concerning the points discussed below. We are also submitting more extensive comments to the Transportation Security Administration (TSA) on the related final rules concerning background checks for all hazmat holders that have been published under Docket Number TSA-2003-14610.

We understand that many comments on both sets of rules already have been offered by state officials on an informal basis, either through direct contact with the appropriate federal officials or through the active role that has been taken by the American Association of Motor Vehicle Administrators (AAMVA). The intent of this correspondence is not to repeat and duplicate issues and concerns that already have been discussed and addressed, but merely to highlight three issues that, as far as we are aware, have not already been the subject of discussions and feedback from TSA and FMCSA representatives.

The first issue concerns the new requirement that hazmat endorsements must be "renewed every five years or less so that individuals are subject to a transportation security administration security screening requirement...at least every five years". Section 383.141 (d). Since Connecticut issues a CDL for a four year term there will be no problem with compliance. However, it has been our experience with our own state-run program for criminal record background checks on school bus drivers, and other drivers of vehicles that transport

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passengers for hire, that such record checks must be performed on a continuous basis, as distinct from periodic checks (such as the five year interval that is being proposed). Since 1993, CTDMV in cooperation with our state police has performed the continuous monitoring of these drivers. The new system works well and avoids issues that developed with respect to drivers who were arrested and/or convicted at some point in time after the initial check was performed.

At a minimum, we suggest that the regulation authorize states to take action and notify TSA if we become aware of a serious arrest or conviction during the period of the license subsequent to the check.

With regard to the new standard concerning citizenship status or permanent resident status, CTDMV agrees with the legal analysis of TSA that appears on page 23862 of the Federal Register Volume 68, Number 86, Monday, May 5, 2003. According to that analysis, the issuance of any CDL license to a person who is not a citizen of the United States or permanent resident alien is inconsistent with existing CDL requirements. More specifically, a person cannot have a "state of domicile" under 49 CFR 383.5 unless such person is, in fact, a permanent resident.

However, the proposed regulation, amending Section 383.71 (as well as the proposed new rule by TSA under Section 1572.105) makes this standard applicable only to holding a hazmat endorsement. We believe that the current practice of many states is to issue CDLs to other classes of aliens and in fact, it may be the practice of some states to issue CDLs to undocumented aliens. We believe that either the TSA rules or FMCSA rules, or both, should specifically refer to the position concerning the need for permanent resident status and extend it to all CDL holders and not just to hazmat applicants and holders. Unless the interpretation of TSA is more clearly stated in your rules, Connecticut and most other states may continue to issue CDLs to numerous aliens who do not have the status of permanent residents. The different standards that exist among the states also contributes to the problem of whether or not a new state of residence should accept a CDL issued by another state. In fact, we may see many hazmat holders retaining CDLs with different endorsement schemes, unless we have a uniform standard on the need for permanent legal residence as defined in federal law, and as evidenced by the necessary credential from BCIS.

The third issue concerns the license renewal procedure for current hazmat endorsement holders. We understand that the rules allow for an extension for a limited period of time while the background checks are being performed. At the same time, the license holder will be seeking to renew the base CDL license for the full four year renewal term, and will be asked to pay the full renewal fee. Therefore, the hazmat credential must be separated in some manner from the CDL until the applicant is cleared or is rejected, as the case may be. In order to

avoid a conflict with the single license rule, we believe that the rules should specifically allow for states to issue some form of temporary hazmat credential. Alternatively, states should be allowed to renew the hazmat if they give official notice to the license holder that it is being issued on a conditional basis, and will either be affirmed or withdrawn by means of a written notification to the license holder after the completion of the background check.

Thank you for your attention to these concerns.

Sincerely,

A handwritten signature in cursive script that reads "John Yacavone".

John Yacavone
Bureau Chief
Bureau of Legal Services

cc: Commissioner Gary J. DeFilippo

Via facsimile transmittal (202) 493-2251